UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE INCRETIN-BASED THERAPIES PRODUCTS LIABILITY LITIGATION	Case No. 3:13-md-02452 AJB (MDD)
This Document Relates to All Cases	**JOINT MOTION FOR DETERMINATION OF DISPUTES RELATED TO THE SCOPE OF WRITTEN DISCOVERY RELATED TO GENERAL CAUSATION**
	Hon. Mitchell D. Dembin

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

In this joint motion, defendants Amylin Pharmaceuticals, LLC ("Amylin") and Eli Lilly and Company ("Lilly") (collectively "Defendants") and Plaintiffs (collectively "Parties"), seek an order to resolve a disagreement regarding the Court's February 18, 2014 Initial Case Management Scheduling Order Regarding General Causation ("Order"), at 1 (Doc. No. 325.)

Defendants' position is, first, that Plaintiffs have not satisfied their obligation to affirmatively "narrow all discovery requests" and instead are demanding that Defendants serve new objections to existing discovery requests; and, second, that the Court's Order limiting discovery to evidence which "has some tendency in logic to prove or disprove whether Defendants' incretin mimetic drugs cause pancreatic cancer" is clear, and does not permit Plaintiffs to seek discovery in this phase of evidence that is not itself probative of general causation.

Plaintiffs' position is that this Motion is procedurally improper and should not be heard. If heard, the motion should be denied because Plaintiffs satisfied their obligation under Judge Battaglia's Order by removing from the general causation phase, at Defendants' request, the interrogatories and document requests that cannot reasonably be expected to lead to the discovery of evidence related to general causation issues. Judge Battaglia's Order nowhere states that all discovery requests in this complex pharmaceutical MDL must be redrafted and re-served to incorporate the substance of his Order. Defendants are now required to serve supplemental discovery responses that fairly address general causation issues consistent with the guidance provided by Judge Battaglia's Order.

Copies of the 54 interrogatories and 178 requests for production that Plaintiffs served on Amylin and Lilly prior to the Court's February 18 Order are attached hereto as the following exhibits:

- Plaintiffs' First Set of Interrogatories to Defendant Eli Lilly and Company (Ex. 1);

- Plaintiffs' Amended Second Set of Interrogatories to Defendant Eli Lilly and Company (Ex. 2);
- Plaintiffs' First Set of Requests to Produce to Defendant Eli Lilly and Company (Ex. 3);
- Plaintiffs' Second Set of Requests to Produce to Defendant Eli Lilly and Company (Ex. 4);
- Plaintiffs' Amended Third Set of Requests to Produce to Defendant Eli Lilly and Company (Ex. 5);
- Plaintiffs' First Set of Interrogatories to Defendant Amylin Pharmaceuticals, LLC (Ex. 6);
- Plaintiffs' Amended Second Set of Interrogatories to Defendant Amylin Pharmaceuticals, LLC (Ex. 7);
- Plaintiffs' First Set of Requests to Produce to Defendant Amylin Pharmaceuticals, LLC (Ex. 8);
- Plaintiffs' Second Set of Requests to Produce to Defendant Amylin Pharmaceuticals, LLC (Ex. 9); and
- Plaintiffs' Amended Third Set of Requests to Produce to Defendant Amylin Pharmaceuticals, LLC (Ex. 10).[1]

[1] Plaintiffs also served identical interrogatories and requests for production on Defendants Novo Nordisk and Merck. Both Novo and Merck join this motion.

I. THE DEFENDANTS' POSITION

On February 18, 2014 the Court ordered Plaintiffs to "narrow all discovery related requests to issues involving general causation," and specifically, to seek discovery only of information that "has some tendency in logic to prove or disprove whether Defendants' incretin mimetic drugs cause pancreatic cancer." Order, at 1. Judge Battaglia made clear his desire "to get to the bottom of the general causation issue and focus the resources and time on that" issue first. Feb. 18, 2014 Tr. at 18. He intends to do this with early "Daubert [motions] and summary judgments associated with that," and if Plaintiffs' claims survive, the parties will then proceed to "all other general discovery." *Id.* at 21.

Plaintiffs refuse to comply with the Court's Order. Out of 232 written discovery requests, they have temporarily "suspend[ed]" just 6 interrogatories and 13 requests for production, and insist that Defendants respond to the remaining 213 requests without any attempt to narrow them. The remaining requests seek literally all documents Defendants ever created that in any way involve incretin therapies.

In conferring with Lilly and Amylin, Plaintiffs conceded that many of their requests seek information beyond general causation discovery. But Plaintiffs' proffered solution was that Defendants should simply serve new objections, and only respond to the extent Defendants believe the information sought is relevant to general causation – and Plaintiffs will seek sanctions if they disagree. Rather than comply with the Court's Order, or even participate in discussions about tailoring their discovery to the issue on which the Court has focused, Plaintiffs want to lie in wait and then claim discovery abuse later.

It is clear from the meet and confer that the Parties have fundamentally different views on the scope of general causation discovery. Plaintiffs claim entitlement to all discovery that might, under some scenario, no matter how remote, eventually lead to discovery of causation information. Plaintiffs' interpretation ignores Rule 26's "reasonably calculated" requirement and limitations and, if

adopted, would eviscerate the efficiencies the Court intended. The Court should order Plaintiffs to immediately narrow their discovery requests as ordered.

A. Background

Plaintiffs described their 178 requests for production and 54 interrogatories served prior to the Court's February 18 Order as aimed at "the whole plethora of issues that could come out." Feb. 18, 2014 Tr. at 19; *see also* Exs. 1-10. On February 18, the Court ordered Plaintiffs to "narrow all discovery related requests to issues involving general causation." Order at 1. On February 28, 2014, Plaintiffs' counsel forwarded to Lilly and Amylin a letter addressed to Novo Nordisk which identified 19 written discovery requests (6 interrogatories and 13 requests for production) that Plaintiffs were willing to temporarily "forego." Specifically, Plaintiffs' letter identified Interrogatory Nos. 12, 25-28 and 30 in their Second Set of Interrogatories (Exs. 2 and 7), and Request Nos. 9, 13, 32, 33, 35-39, 48-45 and 78 in their Amended Third Set of Requests to Produce (Exs. 5 and 10). On March 3, the Parties conferred regarding written discovery.[2] Plaintiffs acknowledged that many of their remaining requests seek information and documents not relevant to general causation, but insisted that Amylin and Lilly do Plaintiffs' job of narrowing the 213 remaining requests at their "peril."[3]

B. Plaintiffs Are Limited In This Phase To Discovery Of Evidence That Has A Tendency To Prove Or Disprove Causation

The Court held that "initial discovery and document production will be limited to whether the requested information has some tendency in logic to prove or disprove whether Defendants' incretin mimetic drugs cause pancreatic cancer." Order at 1-2.

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[2] In an annexed declaration, plaintiffs reference a February 18 meet and confer with Merck and Novo counsel and a purported discussion of another litigation in which no defendant here is involved. Merck and Novo strongly dispute the characterizations made in that declaration. Neither Lilly or Amylin were present at the February 18 meeting, and the purported discussion of other litigation described in Plaintiffs' declaration is irrelevant to this Motion.

[3] Beyond sending the February 28, 2014 letter referenced above, Plaintiffs refused to engage in a discussion of narrowing with Merck and Novo.

The Court ordered that the relevance of general causation discovery "should be assessed based on the 'tendency to make a fact more or less probable than it would be without the evidence.'" *Id.* at 2 (quoting FRE 401(a)).

General causation presents an "extremely narrow"[4] scientific question of "whether exposure to a substance … is capable of causing a particular injury or condition." *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1133-34 (9th Cir. 2002) (noting that the "district court's decision to bifurcate discovery on issues of causation was reasonable"). General causation in a case like this is entirely a matter of expert evidence,[5] a point the Court understands, having made clear that this phase of discovery ends with Daubert motions. Feb. 18 Tr. at 21. Evidence that has "some tendency in logic to prove or disprove whether Defendants' incretin mimetic drugs cause pancreatic cancer," therefore, is evidence that could reliably support a scientific expert's opinion on general causation.

It is no mystery what evidence Plaintiffs' general causation experts might use to formulate opinions. It is the same type of scientific evidence that qualified experts rely upon when assessing carcinogenicity: e.g., data from toxicology, clinical, and epidemiologic studies. The joint statement of the Food and Drug Administration and European Medicine Agency published on February 27, 2014 is instructive. *See* Amy G. Egan, et al., *Pancreatic Safety of Incretin-Based Drugs – FDA and EMA Assessment*, 370 THE NEW ENGLAND JOURNAL OF MEDICINE 794 (2014) (attached as Ex. 11.) The agencies "reviewed nonclinical toxicology data, clinical trial data, and epidemiologic data," as well as post-marketing adverse event reports and

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[4] *See In re Paxil Litig.*, 218 F.R.D. 242, 249 (C.D. Cal. 2003) (citing *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1133 (9th Cir. 2002)).

[5] *E.g.*, *Shalaby v. Newell Rubbermaid, Inc.*, 379 Fed. Appx. 620, 622 (9th Cir. Cal. 2010) (expert testimony required where issues involved "complex facts and theory 'beyond common experience"); *Schudel v. GE*, 35 Fed. Appx. 484, 488 (9th Cir. Wash. 2002) ("Because no expert causation evidence remained, judgment in favor of defendants was proper."); *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th Cir. Nev. 1998) (same); *Jandrt v. Jerome Foods*, 597 N.W.2d 744, 765-66 (Wis. 1999) (holding that plaintiff's continuation of toxic injury claim without expert evidence of causation was "unreasonable" and "frivolous").

published literature. FDA conducted its own toxicology studies on the safety of exenatide, and FDA pathologists re-reviewed manufacturers' histopathology slides and confirmed the accuracy of the manufacturers' conclusions regarding the slides. Based on this review of "multiple streams of data pertaining to a pancreatic safety signal," both the FDA and EMA concluded "that assertions concerning a causal association between incretin-based drugs and pancreatitis or pancreatic cancer … are inconsistent with the current data." *Id.* at 796.

Plaintiffs may offer experts to disagree with the FDA and EMA's assessment, but the types of evidence on which Plaintiffs' experts will rely are the same: actual scientific evidence, such as animal studies, clinical trials, and epidemiologic data. Courts routinely recognize this information as the body of evidence relevant to general causation in pharmaceutical cases.[6] Plaintiffs have no basis, at this stage, to pursue broadside discovery that could not reliably support a general causation opinion.

C. Plaintiffs Have Not Satisfied Their Obligation To Limit Discovery

Plaintiffs have yet to sufficiently narrow their discovery. Plaintiffs know, or their experts can easily tell them, what types of evidence a scientific expert needs to render a general causation opinion. But as the following examples illustrate, many of Plaintiffs' remaining requests are unrelated to general causation evidence:

- "[a]ll DOCUMENTS . . . YOU have ever created … that in any way involve or concern BYETTA or exenatide, sitagliptin, liraglutide and/or any other GLP-1 agonist or DPP-4 inhibitor" (Exs. 5 & 10, Req. No. 3);
- descriptions of relationships with "companies . . . that manufactured,

[6] *See, e.g., Daubert v. Merrell Dow Pharmaceuticals*, 43 F.3d 1311, 1320 (9th Cir. 1995) (tort law permits proof of causation through expert testimony based on animal studies, *similarity* of chemical structure to other agents, and statistical studies); *In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1176-83 (N.D. Cal. 2007) (causation in drug cases is shown by epidemiological clinical and observational trials, as well as meta-analysis of such trials); *see also* Fed. Judicial Center, Reference Manual on Scientific Research 563 (3rd ed. 2011) ("[T]oxicology models based on live animal studies (in vivo) may be used to determine toxicity in humans.").

marketed . . . , distributed, packaged, promoted, and/or sold BYETTA" (Exs. 2 & 7, Int. No. 2);

- "all license … and/or development agreements" (Exs. 2 & 7, Int. No. 3);
- all consulting services "of any kind" (Exs. 2 & 7, Int. No. 5);
- "[a]ll … internal communications pertaining to BYETTA's past, present or future anticipated market share" (Exs. 5 & 10, Req. No. 31);
- "contracts" and "invoices" from "third party contractors" that provide "information to pharmacies" (Exs. 5 & 10, Req. No. 34);
- "advertising, promotional, marketing, sales and/or public relations efforts or campaigns" (Exs. 2 & 7, Int. No. 2); and
- "[a]ll DOCUMENTS used in the training of YOUR sales force" (Exs. 5 & 10, Req. No. 40).

Plaintiffs simply have not complied with the Court's Order to narrow their discovery. And it is no answer for Plaintiffs to demand that Defendants do Plaintiffs' job by objecting to 213 separate requests to the extent they exceed the scope of general causation discovery – and, as Plaintiffs are quick to add, at Defendants' "own peril." This will merely protract the dispute and undermine the very efficiencies the Court sought.

The Court's February 18 Order is clear in limiting production to relevant evidence, and Plaintiffs offer no reason why ***direct*** requests for this information do not suffice. The Court phased discovery to "get to the bottom of the general causation issue and focus the resources and the time on that and leave for shortly thereafter the other noncausation-related issues." Feb. 18 Tr. at 18. Defendants have never argued that discovery is limited to information provided to FDA, and in fact are producing other documents. The only evidence that is properly subject to discovery in this phase is evidence that is directly probative of causation, which is synonymous with evidence upon which a general causation expert might reasonably rely. The Court thus directed Plaintiffs to target a narrow subset of otherwise discoverable information. Plaintiffs' demand for all information – at a pharmaceutical company – that "discusses science" (Pl. Pos. at 7) is not a good-faith attempt to follow that directive. The Court should order Plaintiffs to genuinely narrow their discovery without delay.

PLAINTIFFS' POSITION

Defendants obtained an unprecedented discovery limitation by assuring Judge Battaglia that the parties would not "be back in front of [Judge Battaglia] or in front of Judge Dembin every week talking about whether something is science related or not science related." Feb. 18, 2014 Hr'g Tr., p. 26:9-13 (Plaintiffs); *cf.* 28:13-22 (Lilly). That is precisely what Defendants do with this Motion. Rather than simply answering discovery and serving objections, Defendants ask this Court for what they were denied by Judge Battaglia. Defendants' Motion is both procedurally and substantively defective and should be denied.

I. DEFENDANTS' MOTION IS PROCEDURALLY DEFECTIVE.

A. This Court Is Not The Proper Forum For This Motion.

Defendants ask this Court to narrow the broad definition of general causation discovery spelled out by Judge Battaglia in his Order (Dkt. 325):

> Plaintiffs will narrow all discovery related requests to issues involving general causation. As a result, initial discovery and document production will be limited to whether the requested information has **some tendency in logic** to prove or disprove whether Defendants' incretin mimetic drugs cause pancreatic cancer. **The relevancy of such information should not be assessed based on the source of the document,** i.e., the Marketing Department, **or the category** it has been placed in, i.e., Marketing Files, **but rather should be assessed based on the "tendency to make a fact more or less probable than it would be without the evidence."** Fed. R. Evid. 401(a) (emphasis added).

Defendants contend that Judge Battaglia was mistaken and actually meant to limit general causation discovery to "evidence that is directly probative of causation, which is synonymous with evidence upon which a general causation expert might reasonably rely." *See* Defs.' Position, p. 5. Because Defendants seek to have Judge Battaglia's Order vacated and reissued on their terms, it should have been presented to Judge Battaglia as an Application for Reconsideration under LR 7.1(i).

B. Defendants Did Not Comply With This Court's Chambers Rules.

Defendants' Motion claims to be a discovery motion, not an application for reconsideration; to the extent it is the former, it violates this Court's Rules. Defendants' Motion complains about ***all*** of Plaintiffs' requests but includes only partial quotations of eight specific requests and no analysis. *See* Defs.' Position, pp. 3-4. In violation of Chambers Rule V(C), Defendants (1) did not submit their responses to any of the requests; (2) did not provide a statement regarding each request; and (3) did not provide any means (beyond these five motion pages) for Plaintiffs to provide their responsive statement regarding each request. Plaintiffs should not have to use briefing space to address individual requests, particularly given the misleading way in which Defendants presented those requests. *See* Part II(A). Because the Motion does not comply with Chambers' Rules, it should not be heard.

II. DEFENDANTS' MOTION IS SUBSTANTIVELY DEFECTIVE.

A. The Requests Defendants Complain About May Reasonably Lead To Information Relevant to General Causation.

Plaintiffs do not have enough space to address each of the eight requests referenced by Defendants in detail, but will discuss the first and last:

- First Bullet: This request was intended to refer only to presentations, but a typographical error implies it asks for "all documents." Typically, parties respond to such requests by having a meet-and-confer to address the issue, then, by agreement, construing the request in a common-sense way for purposes of their response. Defendants did not do that before filing this motion. On the substance of the request, Defendants cannot genuinely argue that presentations on chemistry, testing, labeling, pancreatitis, pancreatic cancer, pharmacovigilence, and other science-related issues are not related to general causation. Although presentations on some matters (e.g., pricing, direct marketing, etc.) may not be relevant to general causation, Defendants can explain that in their response.
- Last Bullet: Defendants assert that "documents used in the training of your sales force" cannot be related to general causation. As commonly seen in pharmaceutical MDLs, marketing *always* discusses science (not least because of regulatory requirements), and marketing often *drives*

> science. Applying Judge Battaglia's instructions, Defendants should produce, for example, materials given to the sales force describing how to answer questions relating to the drugs' effect on the pancreas or relationship to pancreatitis or pancreatic cancer. Some documents used to train the sales force (e.g., guidance on attire) may not be relevant to general causation, but Defendants can explain that in their response.

Defendants' motion should be denied because Plaintiffs' discovery requests, in accordance with Judge Battaglia's Order, have some tendency in logic to prove or disprove whether incretins cause pancreatic cancer.

B. There Is No Practical Way To Rewrite The Discovery Requests.

Defendants ask this Court to order Plaintiffs to add the language of Judge Battaglia's Order to each request. But Defendants know what the Order says. Parties are not required to incorporate known quantities such as Fed. R. Civ. P. 26(b)(1), Fed. R. Evid. 401(a), or court orders into their requests. For instance, if an opponent's discovery objection is eliminated on a motion to compel, the moving party does not *insert the terms of the court's order* into the request and re-serve it.

Defendants know—or should know—their documents and can investigate them in light of Judge Battaglia's Order. In contrast, Plaintiffs have no way to rewrite their requests to precisely identify documents they have never seen. As this Court previously reiterated, "It is upon Plaintiffs to make specific discovery requests under the Rules. It is then upon Defendants to conduct reasonable searches for responsive, non-privileged information within their possession, custody or control and produce such information or make particularized objections when warranted." Dkt. 257, p. 3. Defendants ask Plaintiffs to rewrite their discovery to incorporate anticipated objections by Defendants; that is not how discovery works.

C. Defendants' Position on the Scope of General Causation Discovery Is Unsupported.

Defendants cite several cases which reiterate that general causation is determined by scientific evidence, but those cases do not hold that general causation *discovery* is limited solely to the evidence *chosen by the Defendants to support their contentions*—evidence that, unsurprisingly, excludes reams of raw

data and information. *Id*., pp. 1-5. No authority supports that position; in fact, "[r]elevance for purposes of discovery is defined very broadly." *Hickman v. Taylor*, 329 U.S. 495, 506-07 (1947); *see also Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 582 (1993) (expert opinions evaluated only "after extensive discovery"); Dkt. 325 ("relevancy … should be assessed based on the 'tendency to make a fact more or less probable than it would be without the evidence'").

Similarly, Defendants cite no support for their suggestion that general causation discovery should be limited to the scientific data they provided to the FDA and the EMA. Pharmaceutical cases often turn not on what was *given* to regulatory agencies, but on what was *withheld*. The general causation discovery that Plaintiffs need most is that which Defendants did not disclose in an NDA.

III. DEFENDANTS NEED TO RESPOND TO DISCOVERY, NOT DANCE AROUND IT.

Defendants Motion is calculated to avoid providing anything beyond the same carefully selected data Defendants disclosed to the FDA in an NDA. This obstructionism is improper and inconsistent with Defendants' representations to Judge Battaglia. Defendants obtained a limitation on discovery by assuring the Court, "[i]f plaintiffs lack something they genuinely need to establish their general causation case, defendants can produce it without undue delay," Dkt. 310-1, p. 26, and by telling Judge Battaglia at the Status Conference that they knew a focus on science would still involve "massive" discovery, and that they would follow through: **"Even if the Court focuses the parties on science, it's still a massive amount of discovery, and we're willing to undertake that."** Feb. 18, 2014 Hr'g Tr., p. 44 (Novo attorney H. Levine); *see also* p. 6 (Eli Lilly assuring the Court they know "additional discovery" needed); *see also* pp. 11-12 (Merck assuring the Court, "if there's something else out there that's targeted that the plaintiffs want, then we're happy to talk to them about providing that."). Defendants also represented to Judge Battaglia that separating science from non-science would be a simple matter for them: **"[H]ow to separate science from nonscience is really not at issue. We do think that that is easily done[.]"** *Id*., p. 43; *see also* p. 28 (Eli Lilly assuring "the parties are capable of identifying what the reasonable scope

of scientific material is."). Yet Defendants are now baffled by the concept of relevance in civil litigation.

Defendants made clear the reason for their stonewalling at the parties' meet and confer on February 18, 2014. The sanctions recently imposed in the *Pradaxa* litigation[7] have made Defendants concerned that they could be subject to sanctions if they are caught concealing evidence. Defendants told Plaintiffs during the meet and confer that they could not and would not respond to Plaintiffs' interrogatories and document requests until Plaintiffs narrow each request such that it would be virtually impossible for Defendants to be sanctioned if additional responsive documents or information turned up later. *See* Pls.' Decl., ¶¶ 5-7 **(Ex. 12)**. But the solution to their *Pradaxa* problem is quite simple: comply with the Rules by answering discovery in a forthright manner, and there will be no repercussions.

Regardless of Defendants' fear, "a reasonable effort to respond must be made." *Haney v. Saldana*, 2010 WL 3341939 (E.D. Cal. Aug 24, 2010). More importantly, it is not Plaintiffs' obligation to rewrite its discovery requests so that Defendants are comfortable responding to them. Rather, "[t]he producing party should determine the best and most reasonable way to locate and produce relevant information in discovery." *Sedona Principles Addressing Electronic Document Production*, at Comment 6.a.

Defendants cannot be allowed to string discovery out indefinitely because of concerns about sanctions imposed by another court in another litigation. Their motion is simply another gambit for delay, and it should be denied.

IV. CONCLUSION.

Defendants' Motion is both procedurally inappropriate and substantively inapposite. For the reasons set forth above in Plaintiffs' Portion, Plaintiffs respectfully request that the Motion not be heard, or if heard, be denied. In the event the Court hears the Motion, Plaintiffs request oral argument.

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[7] *See, e.g., In re Pradaxa (Dabigatran Etexilate)* Products *Liability Litigation*, 12-md-02385-DRH-SCW, Dkt. 320 (Case Management Order #50).

Respectfully Submitted,

DATED: March 20, 2014

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DECLARATION OF COMPLIANCE

On **Monday, March 3**, **2014**, counsel for Eli Lilly and Company (Kenneth King, Allan Thoen and Karl Gunderson) and Amylin Pharmaceuticals, LLC (Houman Ehsan, Cynthia Merrill, and Scott Edson) met and conferred with Plaintiffs' counsel (including Michael Johnson, Kenneth Pearson, Ryan Thompson, Linda Leibfarth, and Max Kennerly) and discussed the issues raised in this motion and were unable to resolve their dispute.

DATED: March 20, 2014

By: s/ Kenneth J. King
Kenneth J. King
Attorneys for Defendant
Eli Lilly and Company, a corporation

DATED: March 20, 2014

By: s/ Scott M. Edson
Scott M. Edson
Attorney for Defendant
Amylin Pharmaceuticals, LLC

SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that, based upon the authorization of Ryan L. Thompson, the content of this document is acceptable to Plaintiffs' Counsel: Michael K. Johnson, Max S. Kennerly, Ryan L. Thompson, Hunter J. Shkolnik, Tor A. Hoerman and Thomas J. Preuss; and that I have obtained Mr. Thompson's authorization to affix their electronic signatures to this document.

I further certify that the content of this document is acceptable to Amy J. Laurendeau, Kenneth J. King and Scott M. Edson, counsel for Defendants Eli Lilly and Company and Amylin Pharmaceuticals, LLC, and that I have obtained their authorizations to affix their electronic signatures to this document.

DATED: March 20, 2014

s/ Stephen P. Swinton
Stephen P. Swinton
Attorneys for Defendant
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130.

On March 20, 2014, I served the following document described as:

JOINT MOTION FOR DETERMINATION OF DISPUTES RELATED TO THE SCOPE OF WRITTEN DISCOVERY RELATED TO GENERAL CAUSATION

by serving a true copy of the above-described document in the following manner:

BY ELECTRONIC FILING

I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, all parties to this case have been served electronically.

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 20, 2014, at San Diego, California

s/ Stephen P. Swinton